IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1180

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION,

Petitioner,

v.

GEORGE GRAHAM HARDIE AND MORGAN KEATON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

DANIEL H. LOWENSTEIN
ROBERT M. STERN
KENNETH H. FINNEY
NATALIE E. WEST
MICHAEL J. BAKER
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814
Attorneys for Petitioner

INDEX

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS AND ADMINISTRATIVE REGULATIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
1. Unlike the Campaign Spending Limitations Invalidated in *Buckley v. Valeo*, Sections 85200–85202 Do Not Reduce the Quantity of Political Speech; In Fact, Sections 85200–85202 Are More Similar to the Contribution Limits Upheld in *Buckley* Than to the Spending Limits Struck Down	4
2. Sections 85200–85202 Are Designed to Prevent the Distortion of the Electoral Process That Historically Has Arisen From the Involvement of Paid Circulators in Initiative Qualification Drives	8
3. This Case Presents an Opportunity for the Court to Halt Mechanical Application of Its Decision in *Buckley v. Valeo* to State Laws Which Do Not Restrict the Overall Quantity of Political Speech	13
CONCLUSION	15
Appendix A: Opinion of the California Supreme Court	17
Appendix B: (1) U.S. Constitution, Amendment I	26
(2) California Government Code §§85200–85202	26
(3) 2 California Administrative Code §18550	27

TABLE OF AUTHORITIES CITED

Cases

	Page
Bare v. Gorton, 84 Wash. 2d 380, 526 P.2d 379 (1974)	13
Buckley v. Valeo, 424 U.S. 1 (1976)	4, 5, 6, 7, 11, 13, 14, 15
Committee for a Two-Thirds Vote on Taxation v. Eu, No. 258866 (Sacramento Co. Superior Ct., Mar. 26, 1976)	3
Deras v. Myers, 535 P.2d 541 (Ore. 1975)	11, 13
Sadowski v. Shevin, No. 49769 (Fla. S. Ct., filed July 1, 1976)	14
State v. Conifer Enterprises, Inc., 82 Wash. 2d 94, 508 P.2d 149 (1973)	13
State v. Campbell, 506 P.2d 163 (Ore.), appeal dismissed, 414 U.S. 803 (1973)	13

Constitution

United States Constitution, Amendment I	2, 4, 5, 14, 15

Statutes

28 United States Code §1257(3)	2
Code of Alabama, Title 17, §268 (1959)	14
California Government Code §§85200-85202 (West 1976)	passim
Florida Statutes, §106.15, F.S.A. (1973)	14
Oregon Rev. Stat., §254.590 (1975)	13
Washington Rev. Code Ann., §29.79.490(4) (1965)	13

Regulation

2 California Administrative Code §18550	2, 3, 5, 7, 12

Miscellaneous

Final Report to the Assembly Committee on Constitutional Amendments (Sept. 2, 1967) in Appendix to Journal of the California Assembly, Vol. 2 (1967)	10
The Council of State Governments, The Book of the States (1976)	14

In the
Supreme Court of the United States

October Term, 1976

No.

California Fair Political Practices Commission,
Petitioner,
v.
George Graham Hardie and Morgan Keaton,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California

Petitioner California Fair Political Practices Commission respectfully prays that a writ of certiorari issue to review the opinion and order of the Supreme Court of the State of California entered in this proceeding on November 29, 1976.

OPINION BELOW

The opinion of the California Supreme Court is reported at 18 Cal. 3d 371, 134 Cal. Rptr. 201, 556 P. 2d 301 (1976), and a copy of the opinior. appears as Appendix A hereto.

JURISDICTION

The judgment of the California Supreme Court was entered on November 29, 1976, and this petition for certiorari was filed within ninety days of that date. This court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Does a state law which limits the amount that may be spent on paid petition circulators in connection with qualifying an initiative measure for the state ballot, but which places no other limitation on expenditures for advertising, speech or any other activity related to a qualification effort, violate the First Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS AND ADMINISTRATIVE REGULATION INVOLVED

The following constitutional and statutory provisions and administrative regulation involved in this case are set forth as Appendix B:

(1) U.S. Constitution, Amendment I

(2) California Government Code §§ 85200–85202

(3) 2 California Administrative Code § 18550

STATEMENT OF THE CASE

Respondents brought this action to challenge Sections 85200–85202 [1] of the California Political Reform Act of 1974 which was adopted by the people of California as

[1] Unless otherwise noted, all statutory references are to the California Government Code.

an initiative measure in June 1974. Section 85201 imposes a ceiling on expenditures incurred "in furtherance of the circulation or qualification of a statewide petition." The ceiling is computed by multiplying 25 cents times the number of signatures required, with an adjustment for cost of living changes. In respondents' case, the ceiling was $95,104.00.

There are two significant exclusions from the spending limitation. First, Section 85200(b) exempts from restraint "expenditures for advertising or speech regarding the measure" except for that advertising or speech which is "directly incidental to circulation of the petition." Second, petitioner has by administrative regulation excluded from limitation all expenditures which are not related to the use of paid petition circulators (2 Cal. Adm. Code § 18550).[2] In other words, all expenditures made in connection with the use of volunteer petition circulators and all expenditures made for advertising or speech directed at explaining or discussing a proposed initiative measure, promoting its merits, or urging listeners and readers to add their signatures to the petition itself, is activity outside the umbrella of the spending limitation.

Respondents were the proponent and a supporter of a successful drive to place an initiative on the November 1976 statewide ballot. The initiative was designed to

[2] See Appendix B. The regulation was adopted to bring petitioner into compliance with a peremptory writ of mandate issued by a California trial court in a similar though unrelated action. *Committee for a Two-Thirds Vote on Taxation v. Eu*, No. 258866 (Sacramento Co. Superior Ct., Mar. 26, 1976) (see R 77–81).

legalize wagering on greyhound racing in California.[3] Respondents filed their action directly with the California Supreme Court on April 16, 1976. The court accepted the case by exercising its original jurisdiction and issued an order staying the operation of Sections 85200–85202 until final resolution of the lawsuit.

On November 29, 1976, the court issued its decision holding that Sections 85200–85202 violate the First Amendment to the Federal Constitution. The court based its decision on the opinion of this Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), and made no finding based on the State Constitution.

REASONS FOR GRANTING THE WRIT

1. Unlike the Campaign Spending Limitations Invalidated in *Buckley v. Valeo*, Sections 85200–85202 Do Not Reduce the Quantity of Political Speech; In Fact, Sections 85200–85202 Are More Similar to the Contribution Limits Upheld in *Buckley* Than to the Spending Limits Struck Down.

In *Buckley v. Valeo, supra,* this Court upheld the limitations contained in the Federal Election Campaign Act on the amount an individual could contribute to a political campaign, but declared unconstitutional the act's ceiling on campaign expenditures. 424 U.S. at 58–59. The Court held that an absolute ceiling on the amount of overall expenditures that could be made during a political campaign imposed "direct quantity restrictions

[3] The measure appeared on the November ballot as Proposition 13 and was defeated by the voters by a greater than three to one margin.

on political communication and association" (*id.* at 18) and therefore violated the First Amendment.

The California Supreme Court in the instant case, however, failed to recognize that the spending limit contained in Sections 85200–85202 of the state Act is much different from the one struck down in *Buckley*. Section 85200(b) and petitioner's interpretative regulations *expressly exempt* from California's expenditure ceiling the very sort of communication which this Court sought to protect in *Buckley*. Indeed, the variety and quantity of political communication that is permitted under Sections 85200–85202 with no spending limitation is extremely broad—reporting, advertisements and editorials published in newspapers and broadcast on radio and television; newsletters, brochures, circulars, handbills, mailings and other printed matter; and speeches and interviews. In short, speech and advertising relating to the proposed measure are wholly unregulated by the Act. The only activity that is limited is the employment of professionals to obtain signatures.

The court below acknowledged the limited coverage of this statutory scheme, but nevertheless held:

> [A] limitation on expenditures for the use of petition circulators, even though restricted to those who are compensated financially, directly and inevitably restricts "the amount of money a person or group can spend on political communication during a campaign . . . ." (*Buckley v. Valeo, supra,* 424 U.S. 1, at p. 19 [46 L.Ed. 2d 659, at p. 687].)
>
> (Appendix A, p. 20.)

This analysis suggests a mechanical application of the holding in *Buckley* without sufficient attention to the policy considerations underlying that case. In *Buckley*, this Court was concerned that a law not limit absolutely the amount of speech that can occur in a political campaign by limiting the amount of money that can be spent. 424 U.S. at 19. It seems an unwarranted extension of *Buckley*, however, to apply that reasoning to a spending limitation which does not place a ceiling on overall expenditures at all, but instead limits spending in only a narrow segment of a campaign.

Indeed, although the provisions challenged in this action are couched in "spending limitation" language, they are in effect more like the contribution limits upheld in *Buckley* than the expenditure restraints that were invalidated. This Court observed in *Buckley* that unlike the federal act's ceiling on overall campaign expenditures, the contribution limits did not significantly diminish the amount of political dialogue because they entailed "only a marginal restriction upon the contributor's ability to engage in free communication" (424 U.S. at 20–21).

Sections 85200–85202 of the California Act fall into the same category. Speech in all aspects of an initiative qualification drive, with the single exception of the employment of professional petition circulators, is totally unrestrained. Accordingly, proponents of an initiative are subjected to only a "marginal" restriction on their ability to communicate, and the forum for free

and robust discussion of issues and ideas, deemed to be of paramount importance in *Buckley*, remains untrammelled.

The state's interest in controlling distortion of the initiative process by limiting the use of paid circulators is also similar to the governmental interest found compelling in *Buckley*. The Court stated in *Buckley* that limiting "the actuality and appearance of corruption resulting from large individual financial contributors" was alone a sufficient justification for upholding the federal act's limitation on campaign contributions (*id.* at 26). Similarly, Sections 85200–85202 focus on preventing the corruption of the initiative process that can occur when paid petition circulators engage in improper signature-gathering tactics and when the massive involvement of paid circulators permits a measure with little voter support to qualify for the ballot (see discussion at pp. 8–12, *infra*).

Finally, the Court found it significant in *Buckley* that the federal act's limitation on contributions addressed narrowly the announced governmental interest (424 U.S. at 28). Sections 85200–85202, in conjunction with petitioner's interpretative regulation, operate with similar precision. The only expenditures limited are those incurred in connection with the very activity that the law seeks to control—the employment of paid signature gatherers.

The present application of Sections 85200–85202, therefore, is closely analogous in both operation and effect to the limitation imposed by the federal act, and

upheld by this Court, on the size of campaign contributions.

2. Sections 85200–85202 Are Designed to Prevent The Distortion of The Electoral Process That Historically Has Arisen From The Involvement of Paid Circulators In Initiative Qualification Drives.

In 1911 the people of California amended their State Constitution to reserve for themselves the right to directly initiate legislation. Reformers believed that the legislature was too often responsive only to lobbyists, big campaign contributors and special interests, and they hoped the initiative, in conjunction with the referendum and recall, would help restore to each California voter a greater voice in state government.

Unfortunately, on several occasions since the adoption of the initiative it has been found that "direct democracy" is often as subject to improper manipulation by moneyed interests as is the normal legislative process. The need for voter signatures to qualify an initiative measure for the ballot has spawned the creation of firms that gather signatures for a fee. The resulting infusion of professional signature gatherers into the process has given rise to two serious abuses.

First, because an initiative circulation effort requires the participation of hundreds, and often thousands, of persons to solicit signatures without any official supervision, the opportunities for fraud and deception in the process are disturbingly great. Signatures can be forged, circulators can misrepresent the text or purpose of the measure, and individuals can be coerced or bribed

into signing the petition. Experience in California and other states has taught that the incentive for such abuses is greatly enhanced when petition circulators are not committed volunteers, but rather disinterested persons paid on a per signature basis for their efforts. (See R 232–36 for examples of such abuses both in California and in other states.)

Secondly, the massive involvement of professional signature solicitors in initiative qualification drives has permitted measures supported only by narrow special interest groups to qualify for the ballot, not because broad voter support is demonstrated, but because large quantities of money are spent.

For example, it has been reported that in 1948, when 204,672 signatures were required to qualify a measure for the statewide ballot, a firm in San Francisco "guaranteed" to its clients that it would qualify any measure in exchange for a fee of $75,000. If the firm failed to gather the required number of signatures, the client's money would be returned (see R 237). Significantly, this was an open guarantee, without any relation to the nature or merits of the measure. More recently, it has been reported that the going rate for ballot qualification is 35 to 50 cents per signature (*id.*).

The fact that a place on the ballot is virtually for sale to any special interest group that can afford to pay the price is, in itself, sufficient to justify the people's conclusion that a legislative remedy is necessary. Former Secretary of Health, Education and Welfare and former California legislator Caspar Weinberger

described the problem in testimony before the California Assembly Interim Committee on Constitutional Amendments:

> The theory was that the people always would be able to pass legislation they wished and needed if such legislation had been denied to them by a legislature subservient to special interests and pressure groups. As it actually worked out, the theory however has completely failed to keep pace with the practice. . . . It is . . . now possible for any group to qualify and place on the ballot any measure they wish, no matter how outlandish, if they are able to spend $250,000 to $300,000.
>
> This comes about because of the willingness of a sufficient number of California voters to sign any kind of petition that is placed before them by professional signature gatherers. I believe quite literally that if a sufficient number of signature gatherers were employed, at say 50 cents a signature, they could gather enough names to qualify a measure providing for the immediate execution of the Governor. This comes about because there are few, if any, voters who read any petition that is put before them. If a professional signature gatherer hands 10 voters a petition with the oral statement "Sign here to cut taxes," at least seven voters will probably sign.[4]

The initiative qualification process, therefore, is very different from election campaigning and therefore gives rise to different state concerns. In an election campaign,

[4] Final Report to the Assembly Committee on Constitutional Amendments, pp. 28–29 (Sept. 2, 1967) in APPENDIX TO JOURNAL OF THE CALIFORNIA ASSEMBLY, Vol. 2 (1967).

spending may or may not produce votes. Thus, the argument that uncontrolled campaign spending permits a candidate to "buy" an election has been accorded little weight by those courts which have reviewed campaign spending limitations.[5] Moreover, courts have considered the danger of excessive spending by one side in a campaign to be more than offset by the notion that a fair result will somehow emerge when both sides, no matter how well or poorly financed, engage in unrestricted debate. See, e.g., *Buckley v. Valeo, supra,* 424 U.S. at 56–57.

An initiative qualification drive, on the other hand, presents a wholly different situation. Since many individuals will sign a petition no matter what its content (see R 237–38), a massive expenditure of money to hire signature gatherers can result automatically in ballot qualification. This can happen whether or not a significant segment of the populace actually supports qualification of the measure. If that were the result intended by the people when they provided for the initiative in California, they would have simply required payment of a substantial fee to qualify a measure for the ballot. Instead, they have required that widespread voter support be shown by enacting laws such as Sections 85200–85202 which encourage the involvement of volunteer signature solicitors and which prevent a

[5] See, e.g., *Deras v. Myers,* 535 P.2d 541, 546–48 (Ore. 1975) and the literature and commentary cited therein.

measure's proponents from relying completely on professional circulators.[6]

In addition, unlike an election campaign where most issues are contested and a voter can depend on the "marketplace of ideas" for guidance in deciding how to vote, an initiative qualification drive is quite one-sided. A proponent seeks voter support with little or no organized resistance from opposing interests. Thus, whereas the state can depend on the natural competitiveness of an election campaign to bring improprieties to public view, it cannot remain similarly passive in an initiative qualification drive. Measures by the state to prevent abuses before they are allowed to corrupt the initiative process therefore become particularly appropriate. Sections 85200–85202 provide such preventive measures.

Thus, Sections 85200–85202 and their supporting regulation impose a limitation on expenditures made in one narrow aspect of an initiative qualification drive for reasons that set such drives apart from candidate elections. Moreover, the intended objectives of these provisions are of compelling importance—to root out fraud and deception in initiative qualification drives by limiting the use of paid petition circulators and also to preserve the historic purpose of the initiative process by ensuring that measures qualify for the ballot because of genuine voter support, not simply because the proponent is able to spend large sums of money to hire paid circulators.

[6] Recent history in California has shown that measures with broad-based public support have had little trouble attracting sufficient volunteer support to amass the signatures required for ballot qualification. See R 244, 296–97.

3. This Case Presents an Opportunity for the Court to Halt Mechanical Application of Its Decision in *Buckley v. Valeo* to State Laws Which Do Not Restrict the Overall Quantity of Political Speech.

California's law is not the only provision which is threatened by an overly mechanistic judicial response to this Court's holding in *Buckley v. Valeo.* For example, two states, Washington and Oregon, have laws which ban payments to petition circulators altogether.[7] Significantly, the supreme courts of both those states recently upheld these provisions against constitutional challenge (*State v. Conifer Enterprises, Inc.,* 82 Wash. 2d 94, 508 P.2d 149, 153–54 (1973); *State v. Campbell,* 506 P.2d 163, 166–70 (Ore.), appeal dismisssed, 414 U.S. 803 (1973)).[8]

Thus, a conflict exists among the highest courts of three states. California's law, although even less restrictive than the laws of Washington and Oregon because it imposes only a limitation on payments to circulators rather than a complete ban, has been struck down whereas the laws of Washington and Oregon have been upheld. Even if we are wrong in our belief that the California Supreme Court misapplied *Buckley,* the people of Washington and Oregon are entitled to a

[7] Wash. Rev. Code Ann. § 29.79.490(4) (1965); Ore. Rev. Stat. § 254.590 (1975).

[8] It is also significant that those same courts correctly anticipated this Court's decision in *Buckley* by striking down their states' overall campaign spending limits prior to *Buckley. Bare v. Gorton,* 84 Wash. 2d 380, 526 P.2d 379 (1974); *Deras v. Myers,* 535 P.2d 541 (Ore. 1975).

declaration from this Court that their rights too are being violated. If we are right, however, *Buckley* could also be used to upset those laws unless its meaning is clarified by a further opinion of this Court. And if such is the case, the people of California, of course, are entitled to have their law upheld by this Court as well.[9]

Finally, 20 states in addition to California permit statewide legislation to be adopted by the initiative process and 11 other states permit the initiative at the local level.[10] California frequently serves as a laboratory for the development of novel legislation in this country, and the courts of other states often look to the California Supreme Court for guidance when deciding similar questions. Widespread interest therefore exists in the outcome of this litigation. Not only will it provide a guide to persons interested in refining regulation of the

[9] There are other state laws which likewise do not restrict the overall quantity of speech in a political campaign, but which are vulnerable to attack under *Buckley* simply because they are cast in the form of a spending limitation. Alabama, for example, restricts the amount that persons can spend to run for statewide office, but excludes from the limitation all expenditures for media advertising. Code of Ala., Tit. 17, § 268 (1959). Florida permits unlimited spending during the 63-day period before an election, but prior to that time a candidate is prohibited from expending any funds for media advertising, billboards or campaign literature. § 106.15, Fla. Stat., F.S.A. (1973). A challenge to this law was argued before the Florida Supreme Court on February 4, 1977. *Sadowski v. Shevin,* No. 49769 (Fla. S. Ct., filed July 1, 1976). We of course take no position as to whether these laws are too restrictive to pass First Amendment muster. The point is that *Buckley* provides a court little guidance in ruling upon laws such as these which impose only a partial restraint on campaign spending.

[10] THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 218 (1976).

initiative process, but it will also be looked to by other courts when they endeavor to apply *Buckley* to future litigation. More important, with respect to statutes already enacted, review of this case can provide a vehicle for this Court to announce that *Buckley v. Valeo* does not mean that all spending limitations are *per se* violative of the First Amendment without regard to the varying types of restraints they impose or the particular interests they promote.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the California Supreme Court.

Respectfully submitted,

DANIEL H. LOWENSTEIN
ROBERT M. STERN
KENNETH H. FINNEY
NATALIE E. WEST
MICHAEL J. BAKER
Fair Political
Practices Commission
Attorneys for Petitioner

February 25, 1977

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Filed November 29, 1976

SF 23450

GEORGE GRAHAM HARDIE AND MORGAN KEATON,

Petitioners,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Respondents.

RICHARDSON, J.—In this original mandamus proceeding, we consider the constitutionality of sections 85200–85202 of the Government Code, which impose limitations on the amount that can be expended in furtherance of the circulation of petitions by which initiative measures may qualify for the statewide ballot. We conclude that these sections infringe impermissibly upon rights of speech and association guaranteed by the First Amendment to the United States Constitution. Accordingly, we will issue our peremptory writ of mandate commanding respondent state officials to refrain from enforcing them. However, we uphold provisions of the Elections Code (§ 3507) which limit the time for petition circulation.

Petitioner Hardie is a "proponent" of the Greyhound

Dog Racing Initiative sought to be placed on the November 1976 ballot, and petitioner Keaton is a "person" who desires to incur expenditures in behalf of the measure's qualification. The "proponents" of a measure are defined as those persons who commence the qualification procedure by presenting to the Secretary of State a request for preparation of a title and summary of the initiative. (Elec. Code, § 3500.5.) As we will indicate, the respective capacities of Hardie as "proponent," and Keaton as "person," have significance in the pattern of the relevant statutes.

Government Code sections 85200–85202, the challenged statutes, were enacted as part of the Political Reform Act of 1974 (the Act). Section 85200 generally prohibits any "person" from incurring expenditures "in furtherance of . . . circulation or qualification of a statewide petition . . ." unless such expenditures are expressly authorized by the "proponent." Subdivisions (a) and (b) of the section contain an express exemption from application of the Act for those unreimbursed personal expenses "incidental" to "circulation" and "advertising, and speech" expenditures not "directly incidental" to "circulation."

Section 85201 limits the *total* expenditures by *all* persons "in furtherance of the circulation or qualification of a statewide petition" to 25 cents times the number of signatures required for qualification, as adjusted for changes in the cost of living.

Section 85202 empowers the Fair Political Practices Commission (Commission) or any voter to seek a court order restraining the Secretary of State from submitting to the electorate any measure which, it is shown by "clear and convincing evidence," would not have qualified but for violations of sections 85200 and 85201. Under other provisions of the Government Code, the

Commission is also empowered, after a hearing, to issue cease and desist orders and to impose administrative sanctions where violations of the Act were found. (Gov. Code, §§ 83115, 83116.)

These sections reflect a legislative intent to regulate, in considerable detail, the circulation process. However, the parties agree that the effect of the sections has been restricted by a holding of the Sacramento Superior Court (*Committee for a Two Thirds Vote* v. *Eu* (Jan. 8, 1976) No. 258866), which limits the reach of the expenditure limitation to "paid petition circulators." Respondent Commission has amended its interpretative regulation accordingly. (Cal. Admin. Code, tit. 2, § 18550.)

Petitioners, however, direct a pointed challenge to these statutes, even as so limited, arguing that they constitute an impermissible infringement on petitioners' First Amendment rights and that they run afoul of the California Constitution as well. We issued our alternative writ of mandate and stayed the enforcement of sections 85200–85203 pending our resolution of the matter. Respondents Secretary of State and Fair Political Practices Commission have filed returns opposing the issuance of a peremptory writ. Respondents county registrars of voters (who have initial responsibility for filing and screening initiative petitioners) have disclaimed any active interest in this litigation and express a willingness to comply with any disposition of the case.

Our examination of the contentions of the respective parties is aided by the recent holding of the United States Supreme Court in *Buckley* v. *Valeo* (1976) 424 U.S. 1 [46 L.Ed.2d 659, 96 S.Ct.612]. In *Buckley* the high court struck down provisions of the Federal Election Campaign Act of 1971, as amended, which sharply

limited expenditures by, or in behalf of the election of, a candidate for federal office. Finding that virtually every means of political communication in modern society requires or involves the expenditure of money, the high court concluded: "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." (*Id.*, at p 19.) Discerning no overriding governmental interest the high court held that such limitations infringed upon the First Amendment's guarantees of free speech and association.

We subsequently recognized the applicability of *Buckley* to sections of the Act which imposed similar ceilings on expenditures for or against the passage of statewide ballot propositions. (*Citizens for Jobs & Energy* v. *Fair Political Practices Com.* (1976) 16 Cal.3d 671, 675 [129 Cal.Rptr. 106, 547 P.2d 1386].) The principles expressed in *Buckley* and *Citizens* have equal application to the process by which citizens seek to qualify such propositions for submission to the voters.

As defined by the Supreme Court, the purpose of the First Amendment is "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." (*Roth* v. *United States* (1957) 354 U.S. 476, 484 [1 L.Ed.2d 1498, 1506–1507, 77 S.Ct. 1304]; *New York Times Co.* v. *Sullivan* (1964) 376 U.S. 254, 269 [11 L.Ed.2d 686, 700, 84 S.Ct. 710, 95 A.L.R.2d 1412].) Qualification of an initiative measure requires prior evidence of significant voter support in the form of petition signatures. It follows that the process of solicitation of these signatures, of necessity, involves discussion of the merits of the measure. The circulators themselves thus become unavoidably a

principal means of advocacy of the proposal. Further, as the Commission implicitly concedes, limitations of the kind expressed in sections 85200–85202 may substantially hinder a proposal's initial access to the electoral process. Thus, a limitation on expenditures for the use of petition circulators, even though restricted to those who are compensated financially, directly and inevitably restricts "the amount of money a person or group can spend on political communication during a campaign . . . ." (*Buckley* v. *Valeo, supra,* 424 U.S. 1, at p. 19 [46 L.Ed.2d 659, at p. 687].)

The consequent restraint on political speech imposed by the sections in question is not small. As we have noted, under the statutory qualification procedure, the petition circulators, whether "paid" or "volunteer," necessarily are a principal means of advocacy for a proposed initiative. To qualify a statewide initiative measure for the November 1976 ballot 312,404 valid signatures are required. Contrary to the Commission's contention, we cannot assume that any proposal capable of generating genuine voter support will necessarily attract at the outset sufficient "volunteer" circulators to do the job. Hence, even by limiting the applicability of the Act to "paid" circulators, there remains a demonstrable potential for serious infringement on the right to political communication guaranteed by the First Amendment.

We accordingly submit the challenged sections to that strict scrutiny appropriate to cases in which fundamental constitutional rights are affected. Using this test, we determine whether the restraints imposed are nonetheless justified as incidental to the promotion of a "substantial" or "compelling" governmental interest, unrelated to speech, and unattainable by means less intrusive upon First Amendment rights.

(*Buckley* v. *Valeo, supra,* 424 U.S. at pp. 44–45, 47–48 [46 L.Ed.2d at pp. 702–704]; *N.A.A.C.P.* v. *Button* (1963) 371 U.S. 415, 438, 444 [9 L.Ed.2d 405, 421, 424–425, 83 S.Ct. 328]; *Shelton* v. *Tucker* (1960) 364 U.S. 479, 488–490 [5 L.Ed.2d 231, 237–239, 81 S.Ct. 247].)

The Commission urges that there are two such "compelling" interests, the first of which is the prevention of the fraud and corruption alleged to be associated with the use of "paid" petition circulators. We note that in *Buckley* the high court expressly concluded that the prevention of corruption did not constitute an interest sufficiently substantial to warrant the direct infringement of political communication represented by campaign expenditure limitations. (*Buckley* v. *Valeo, supra,* at p. 45 [46 L.Ed.2d at p. 703].)

Moreover, the Commission advances no persuasive argument that the Legislature cannot deal effectively with corruption in the circulation process by laws more narrowly aimed at specific abuses. Several existing statutes proscribe a wide range of corrupt circulation practices. The Elections Code, for example, prohibits misrepresentation in circulation of a petition (§ 29214); filing (§ 29215) or circulating (§ 29216) petitions with false signatures; filing false affidavits concerning any petition (§ 29218; forgery of petition signatures (§ 29221); and withholding or obscuring the text or summary of a measure from a potential signatory's view (§§ 29228, 29229).

Secondly, the Commission also contends that the state has a "compelling" interest in assuring that positions on the ballot cannot be bought. Again, however laudable the goal similar considerations were expressly rejected in *Buckley* (424 U.S. at pp. 48–49 [46 L.Ed.2d at pp. 704–705]) and *Citizens* (16 Cal.3d at p. 675.) The state may indeed be empowered to condition ballot eligibility

upon a prior demonstration of voter support. What it may not do is to impose expenditure limitations on the process by which that support is solicited. On the other hand, as the high court noted in *Buckley,* appropriate limitations on individual *contributions* remain a constitutionally valid means of dealing with undue influence by moneyed interests in the electoral process. (*Buckley, supra,* at pp. 23–38 [46 L.Ed.2d at pp. 690–698].)

We think it significant that the cases from other jurisdictions cited by the Commission as upholding broad regulation of paid petition circulators (*State* v. *Campbell* (1973) 265 Ore. 82 [506 P.2d 163, 166–170], app. dism. *sub nom. Campbell* v. *Oregon* (1973) 414 U.S. 803 [38 L.Ed.2d 39, 94 S.Ct. 132]; *State* v. *Conifer Enterprises, Inc.* (1973) 82 Wn.2d 94 [508 P.2d 149, 153]) predate *Buckley.* Their authority is therefore suspect to the extent that they conflict with the *Buckley* rationale.

Concluding as we do that no compelling interest has been demonstrated which justifies the limitations imposed by sections 85200–85202, we hold that the sections are unconstitutional as an undue infringement on the rights of political expression guaranteed by the First Amendment to the federal Constitution. As such they are void. We accordingly do not reach petitioner's alternative arguments that these provisions are equally invalid under unrelated provisions of our state Constitution.

Petitioners also challenge on state constitutional grounds the provisions contained in Elections Code section 3507, which impose a 150-day limitation on the circulation of petitions. We are advised by respondent Secretary of State that, within the 150-day period allotted to it, the Greyhound Dog Racing Initiative obtained more than 110 percent of the necessary

signatures and has, accordingly, qualified for the November 1976 ballot. The point is arguably moot. However, appellate courts have on numerous occasions exercised their discretion to consider questions technically moot as to the parties where the issues are nonetheless of continuing public importance. (E.g., *Diamond* v. *Bland* (1970) 3 Cal.3d 653, 657 [91 Cal.Rptr. 501, 477 P.2d 733], cert. den. *sub nom. Homart Development Co.* v. *Diamond* (1971) 402 U.S. 988 [29 L.Ed.2d 153, 91 S.Ct. 1661], rehg. den. (1971) 404 U.S. 874 [30 L.Ed.2d 120, 92 S.Ct. 27], rehg. den. (1972) 405 U.S. 981 [31 L.Ed.2d 257, 92 S.Ct. 1189], rehg. den. (1972) 409 U.S. 897 [34 L.Ed.2d 154, 93 S.Ct. 91] [initiative qualification]; *DiGiorgio Fruit Corp.* v. *Dept. of Employment* (1961) 56 Cal.2d 54, 58 [13 Cal.Rptr. 663, 362 P.2d 487]; *People* v. *West Coast Shows, Inc.* (1970) 10 Cal.App.3d 462, 467–468 [89 Cal.Rptr. 290].) We do so here.

Petitioners suggest that the 150-day limitation expressed in Elections Code section 3507 is inoperative since it is superseded by the constitutional requirement that an initiative measure shall be submitted at the next general election "held at least 131 days after it qualifies . . . ." (Cal. Const., art. IV, § 22, subd. (c).) In petitioners' view, this constitutional language means that an initiative petition may be submitted to the Secretary of State at any time up to 131 days before the election for which qualification is sought. Petitioners, however, overlook another provision of article IV, namely, section 24, subdivision (e), which provides that determination of the means by which a measure may "qualify" is a legislative prerogative.

We perceive no difficulty in harmonizing the relevant provisions. Under Elections Code section 3507, as authorized by article IV, section 24, subdivision (e), of

the Constitution, a measure may "qualify" only by submission of supporting petitions, bearing the necessary signatures, within the requisite 150-day solicitation period. Once a measure has "qualified" it must then be presented to the next statewide election held at least 131 days thereafter "or at any special statewide election held prior to that general election." (Cal. Const., art. IV, § 22, subd. (c).) Such an interpretation is consistent with our analysis of a predecessor provision to Elections Code section 3507 in *Gage* v. *Jordan* (1944) 23 Cal.2d 794, 803–804 [147 P.2d 387].

We conclude, accordingly, that the 150-day limitation imposed by section 3507 is not invalid under article IV of the state Constitution.

The alternative writ of mandate and the temporary stay heretofore issued are discharged. Let a peremptory writ of mandate issue, directed to the Secretary of State and the Commission, commanding them to refrain from enforcing sections 85200–85202 of the Government Code, and to perform their election duties without regard to those sections. Since respondent county registrars have indicated a willingness to comply voluntarily with our decision, there appears no need to direct the peremptory writ to them, and accordingly, we do not do so. (*Citizens for Jobs & Energy* v. *Fair Political Practices Com., supra,* 16 Cal.3d at p. 675.)

Wright, C. J., McComb, J., Tobriner, J., Mosk, J., Sullivan, J., and Clark, J., concurred.

APPENDIX B

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

California Government Code §§ 85200–85202

85200. No person shall incur any expenditure in furtherance of a circulation or qualification of a statewide petition without the express or implied authorization of the proponent. For purposes of this article, "expenditure" does not include:

(a) Unreimbursed expenses incurred by a circulator incidental to his circulation of the petition;

(b) Expenditures for advertising or speech regarding the measure unless the advertising or speech is directly incidental to circulation of the petition.

85201. Not more than twenty-five cents ($0.25) multiplied by the number of signatures required for qualification, adjusted for cost of living changes, shall be spent in furtherance of the circulation or qualification of a statewide petition.

85202. In addition to other remedies and penalties, a court shall order the Secretary of State not to submit to the voters any measure which it is shown by clear and convincing evidence would not have qualified but for a violation of this article. The proponent of the measure shall be a party or real party in interest to any action brought under this section. Actions under this section may be initiated by the Commission or any voter. No

judgment shall be issued under this section later than the day prior to the election. If a judgment against the proponent under this section is reversed after the election or after it is too late to submit the measure to the voters on the scheduled day of the election, the proposed measure will be deemed to have qualified on the day of the reversal of the judgment.

2 California Administrative Code § 18550

Limitations on Expenditures for Circulation of Statewide Petitions (85200)

(a) "Unreimbursed expenses incurred by a circulator" as used in Section 85200 (a) are not subject to the limitation on expenditures contained in Section 85201 and include only the reasonable personal expenses incurred without reimbursement by a circulator in securing signatures on a petition. For purposes of this paragraph:

(1) Personal expenses include transportation, food and those supplies ordinarily necessary for the circulation of the petition such as writing instruments, clipboards and similar items, but do not include the costs incurred in reproducing or mailing the petition.

(2) An expense is incurred without reimbursement if the expense is incurred without any understanding or agreement that it will be directly or indirectly repaid, and it is in fact not repaid.

(b) Expenditures which require the authorization of the proponent under Section 85200 and which are subject to the limitation imposed by Section 85201 include only expenditures incurred in connection with the use of paid petition circulators. Such expenditures shall include:

(1) Compensation to paid petition circulators;
(2) Expenditures made to recruit, train, organize, instruct, supervise, print petitions for the use of, provide materials to, verify, assemble and submit petitions circulated by, or otherwise utilize paid petition circulators;
(3) Administrative and overhead expenditures allocable to the use of paid petition circulators. For purposes of this paragraph:
(A) "Administrative and overhead expenditures allocable to the use of paid petition circulators" are all expenditures incurred in connection with a ballot measure qualification drive except: (i) expenditures directly traceable to the use of volunteer petition circulators and wholly unrelated to the use of paid petition circulators; (ii) expenditures directly related to the preparation or presentation of advertising or speech, such as the cost of drafting, printing, typing, reproducing and disseminating brochures, handbills, advertisements, newsletters mailings, interviews, speeches and media presentations, provided that such advertising or speech is not utilized in connection with the activities described in subparagraphs (b) (1) and (b) (2) of this regulation; (iii) expenditures described in subparagraphs (b) (1) and (b) (2) of this regulation; and (iv) expenditures exempted from limitation by subsections (a) and (d) of this regulation. If all the signatures obtained in a qualification drive are gathered by paid petition circulators, all

such administrative and overhead expenditures shall be subject to the limitation imposed by Section 85201 and to the requirements of Section 85200.
(B) If some, but not all, of the signatures obtained in a qualification drive are gathered by paid petition circulators, a portion of the administrative and overhead expenditures described in the preceding subparagraph shall be subject to the limitation imposed by Section 85201 and to the requirements of Section 85200. Such portion shall be determined by: (i) multiplying the sum of such administrative and overhead expenditures times the ratio of signatures gathered by paid petition circulators to the total number of signatures obtained; or (ii) any other reasonable method of allocation employed by the proponent if it more accurately reflects the portion of such expenditures allocable to the use of paid petition circulators.

(c) For purposes of this regulation, a "paid petition circulator" is a person who receives compensation, other than reimbursement for actual out-of-pocket expenses, for soliciting or procuring signatures on a petition. A person who is employed for a purpose other than circulating petitions, but who solicits or procures signatures on a petition during his or her regular working hours without loss of pay, will be considered a "paid petition circulator" unless the time spent on such activity is minimal and does not appreciably add to or detract from such person's normal job responsibilities. When an employee is deemed to be a "paid petition circulator" within the meaning of this paragraph, the pro rata por-

tion of such person's salary or compensation which is attributable to the time spent circulating a petition shall be subject to the limitation imposed by Section 85201 and to the requirements of Section 85200.

(d) The following are not expenditures in furtherance of the circulation or qualification of a statewide measure within the meaning of Sections 85200 and 85201:

(1) Costs incurred in connection with litigation, proceedings or appearances before courts, legislative bodies and administrative agencies;

(2) Costs incurred by persons in interpreting their legal responsibilities under applicable federal, state and local laws and regulations.

COMMENT: Paragraphs (b) and (c) were added to this regulation by an amendment adopted on April 8, 1976, to interpret Sections 85200–85203 of the Act in a manner consistent with the writ of mandamus issued on March 26, 1976 in *Committee for a Two-Thirds Vote on Taxation* v. *Eu,* No. 258866 (Sacramento County Superior Court).

o